

TO: DEBTORS IN POSSESSION, TRUSTEES AND THEIR COUNSEL

FROM: THE UNITED STATES TRUSTEE

SUBJECT: CHAPTER 11 OPERATING INSTRUCTIONS AND REPORTING REQUIREMENTS

The United States Code, Title 28, Section 581(a)(11) provides for the appointment of a United States Trustee for the Northern District of Illinois and the State of Wisconsin. 28 U.S.C. §586(a)(3) provides that the United States Trustee shall supervise the administration of Chapter 11 cases within the districts. Sections 1106 and 1107 of Title 11 of the United States Code (hereinafter "the Bankruptcy Code") require the Trustee or Debtor In Possession (hereinafter "DIP") to furnish such information regarding the case as the United States Trustee requires. Hereinafter the term "DIP" also shall refer to trustees appointed in Chapter 11 cases.

The following requirements of the United States Trustee are applicable for all DIPs in a Chapter 11 case under the Bankruptcy Code. **FAILURE TO COMPLY WITH THESE REQUIREMENTS WILL RESULT IN A MOTION OR APPLICATION TO THE BANKRUPTCY COURT FOR APPROPRIATE RELIEF, INCLUDING DISMISSAL OF THE CASE, CONVERSION TO ANOTHER CHAPTER OF THE BANKRUPTCY CODE, APPOINTMENT OF A CHAPTER 11 TRUSTEE OR EXAMINER, OBJECTION TO ATTORNEY'S FEE, OBJECTION TO DISCHARGE AND/OR ASSESSMENT OF COSTS, FEES, PENALTIES, OR DAMAGES AGAINST INDIVIDUALS OR OTHER ENTITIES FOR SUCH NONCOMPLIANCE.**

**1. OIRR RECEIPT AND VERIFICATION.** In order to ensure appropriate compliance with the Operating Instructions and Reporting Requirements (hereafter referred to as "OIRR") it is imperative that counsel carefully review these requirements with the DIP immediately upon receipt. The DIP and counsel shall acknowledge receipt of the OIRR and furnish to the United States Trustee verification that they have read, understand and agree to perform in accordance with the requirements by executing the enclosed verification and returning it within ten (10) days [*See Attached EXHIBIT "A"*]. This receipt needs to be completed only once.

**2. BANK ACCOUNTS, BOOKS, AND RECORDS.** Immediately upon the filing of the Chapter 11 case, the DIP is required to close previous bank accounts and open one or more accounts designated as Debtor In Possession accounts. "Debtor In Possession" shall be imprinted on the face of all checks issued by the DIP. All disbursements made by a DIP must be made by check or draft drawn on the DIP's account. Under 11 U.S.C. §541(a)(6) earnings from services performed by an *individual* debtor after the commencement of the case are *not* property of the estate. Accordingly, such earnings should *not* be deposited in any DIP account. Furthermore, unless court approval is obtained, such earnings should not be used to pay any claims against the estate.

All DIP funds and bank accounts must be collateralized in accordance with the provisions of 11 U.S.C. §345. Debtors shall notify the United States Trustee when debtor in possession funds at a banking institution exceed the insured limitation of \$100,000.00 per customer.

Pre-petition books and records of the debtor should be closed as of the date of the filing of the petition.

Thereafter new books and records should be kept for the DIP.

**3. TAX DEPOSITS.** The DIP shall set aside all monies required to be withheld from employees or collected from others for taxes under any law of the United States or any other governmental unit during the pendency of the proceeding [see Fed. R. Bankr. P. 2015(a)(3)]. The DIP shall pay all federal taxes due to the Internal Revenue Service through a bank or other authorized financial institution, as prescribed by Circular E, Employer's Tax Guide. The payment of taxes shall be made with an accompanying IRS Form 6123, "Verification of Fiduciary Federal Tax Deposit," a copy of which shall be transmitted to the United States Trustee for each payroll period.

**4. PROOF OF INSURANCE COVERAGE.** All DIPs must maintain adequate insurance and make all post-petition premium payments when due. Within five days of the filing of the petition, the DIP must furnish to the Office of the United States Trustee a certificate of insurance [*See Attached EXHIBIT "A-1"*] for each policy. The certificate should clearly list the debtor's name and case number. Such insurance shall include worker's compensation, general liability, fire, theft, and motor vehicle insurance, together with all other insurance coverage normally and customarily used in the business. The standard cancellation notice on each policy must be amended to read as follows: "Should any of the insurance policies be canceled before the expiration date thereof, the issuing company will mail ten days prior written notice to the certificate holder and the United States Trustee, 780 Regent Street, Suite 304, Madison, Wisconsin 53715."

**5. INVENTORY.** If the Bankruptcy Court so directs, the DIP shall conduct a physical inventory of all its real and personal property as of the filing of the petition. The DIP must file the complete inventory with the Bankruptcy Court and transmit a copy to the United States Trustee within 30 days [see Fed. R. Bankr. P. 2015(a)(1)].

**6. USE OF ESTATE PROPERTY.** Section 363 of the Code permits the DIP to use estate property in the ordinary course of business. Estate property may *not* be used to pay professional fees, including those of attorneys and accountants or *pre-petition* debts, including claims of secured creditors and landlords, except pursuant to order of Court. Further, to the extent that a secured creditor has a lien on cash or its equivalent in the DIP's possession, the DIP may not use such cash except with the secured creditor's consent or pursuant to order of the Court. Failure to abide by these requirements may result in the United States Trustee's requesting the Court to terminate your status as DIP and place estate property in the hands of a Court approved trustee.

**7. MONTHLY OPERATING REPORTS.** For financial reporting purposes, a Chapter 11 DIP is a different entity from that which existed prior to the commencement of the bankruptcy. The financial report ("report") required by the United States Trustee to be submitted by all Chapter 11 DIPs is designed to reflect changes in the financial position of a DIP during the pendency of a Chapter 11 case. Each report is a sworn statement by the respective DIP and must be as accurate as possible.

The initial report submitted by a DIP in its Chapter 11 case should cover the period from the date of the commencement of the bankruptcy case to the end of the month in which the case was commenced; provided, however, that if fewer than 10 business days remain in the calendar month in which the case was commenced, the initial report should cover the remaining portion of the month in which the case is commenced and the next reporting period. The opening balance for inventory, cash and receivables in the initial report should reflect the DIP's financial condition as of the date the case commenced. Liabilities of the DIP should always start at zero, since the DIP is a "new" reporting entity. Pre-petition liabilities

should not be included in the DIP reports.

The monthly report must be dated and signed by the DIP. Original reports shall be transmitted to the United States Trustee at the above address. For all Chapter 11 cases, copies of each report shall also be submitted to the designated representative or chairperson of a duly appointed creditors' committee, if any. Monthly reports shall be submitted not later than the 15th of each month. **Incomplete reports shall be deemed not submitted.**

For Chapter 11 cases filed in **Madison, Wisconsin**, additional copies of each report shall be submitted to:

U.S. Bankruptcy Court Internal Revenue Service  
120 N. Henry Street 310 W. Wisconsin Avenue  
Madison, WI 53703 Milwaukee, WI 53202-2221

For Chapter 11 cases filed in **Eau Claire, Wisconsin**, additional copies of each report shall be submitted to:

U.S. Bankruptcy Court Internal Revenue Service  
500 S. Barstow Commons 310 W. Wisconsin Avenue  
P.O. Box 5009 Milwaukee, WI 53202-2221  
Eau Claire, WI 54702

For Chapter 11 cases filed in **Rockford, Illinois**, additional copies of each report shall be submitted to:

U.S. Bankruptcy Court Internal Revenue Service  
211 S. Court Street D.P.N. 27-3  
Rockford, IL 61101 Attn: Special Procedures  
230 S. Dearborn Street  
Chicago, IL 60604

**8. MODIFICATION OF REQUIREMENTS.** In the event a DIP believes the reporting requirements to be inappropriate in whole or in part due to the circumstances of the particular case, the DIP may submit a written request to the United States Trustee for a modification of the reporting requirements setting forth the reasons the DIP believes the requirements to be inappropriate. Such requests will be reviewed by the United States Trustee and responded to in writing. Until a DIP receives a written authorization to modify the reporting requirements, the DIP is required to continue to submit complete and timely reports. Monthly operating reports are not required for periods after the case is confirmed, converted or dismissed.

**9. UNITED STATES TRUSTEE SYSTEM FUND/QUARTERLY FEES.** On October 26, 1986, the

President signed into law the Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554. Section 117 of the Act imposes a fee on all Chapter 11 debtors to be paid each calendar quarter. As amended by Pub.L.No. 104-208, effective January 27, 1996, the fee is due every calendar quarter starting with the quarter in which your case is commenced and continues subsequent to confirmation until and including the quarter in which your case is converted, dismissed or closed. The quarterly fee amount is based on the disbursements made during that particular quarter. In addition, you are subject to payment of a quarterly fee for any quarter during which you were a Chapter 11 debtor, even if it is only for one day of the quarter. Quarterly fees are not prorated. Moreover, a minimum fee of \$250.00 is due each quarter even if no disbursements are made. The due date for payment is 30 days after the quarter ends. Thus, the fees for the quarter of January, February, and March are due April 30th. The fees for the quarter of April, May and June are due July 31st. The fees for the quarter of July, August, and September are due October 31st and the fees for the quarter of October, November, and December are due January 31st.

If your case is being jointly administered with another case or has been consolidated for administrative purposes with another case, you must remit a separate fee for each case. The fee schedule is set forth below.

### **FEE SCHEDULE**

#### **Total Quarterly Disbursements Quarterly Fee**

Under \$15,000.00 \$ 250.00

\$ 15,000.00 to \$ 74,999.99 \$ 500.00

\$ 75,000.00 to \$ 149,999.99 \$ 750.00

\$ 150,000.00 to \$ 224,999.99 \$ 1,250.00

\$ 225,000.00 to \$ 299,999.99 \$ 1,500.00

\$ 300,000.00 to \$ 999,999.99 \$ 3,750.00

\$1,000,000.00 to \$1,999,999.99 \$ 5,000.00

\$2,000,000.00 to \$2,999,999.99 \$ 7,500.00

\$3,000,000.00 to \$4,999,999.99 \$ 8,000.00

\$5,000,000.00 and over \$10,000.00

*During the Pendency of your Chapter 11 case, quarterly fees should be paid to the order of "U.S. Trustee" and mailed to U.S. Trustee Payment Center, P.O. Box 198246, Atlanta, Georgia 30384-8246.*

Fed. R. Bankr. P. 2015(a)(5) requires that a DIP file with the Bankruptcy Court and transmit to the

United States Trustee a statement of disbursements made during a calendar quarter, the amount of quarterly fees owed and the amount of fees paid to the United States Trustee. The U.S. Trustee Quarterly Fee Statement [*See Attached EXHIBIT "B"*] must be filed with the Bankruptcy Court and transmitted to the United States Trustee on or before the last day of the month after the end of each calendar quarter. *Even if a plan has been confirmed, this report must be timely submitted by all Chapter 11 debtors until the case has been converted , dismissed or closed by final decree.*

If you seek to voluntarily dismiss your case, you must tender a copy of the check representing payment of the quarterly fee together with a completed Form B to the United States Trustee's prior to your case being dismissed. Failure to tender the quarterly fee may result in the United States Trustee's opposing dismissal of the case and requesting its conversion to a Chapter 7 liquidation.

**Failure to pay the quarterly fee is cause for the involuntary conversion or dismissal of your case.** 11 U.S.C. §1112(b)(10). All fees must have been paid, or the plan must provide for the payment of the fees on its effective date for a Plan of Reorganization to be confirmed by the Court. 11 U.S.C. §1129(a)(12). **Failure to pay quarterly fees by the effective date will be considered grounds for the revocation of confirmation under 11 U.S.C. §1144.**

Finally, please take notice that a Chapter 11 debtor's failure to pay quarterly fees to the United States Trustee pursuant to 28 U.S.C. §1930 has additional significant legal consequences. Under the Debt Collection Improvement Act of 1996, Public Law 104-134, the United States Department of the Treasury may (1) send a dunning notice to the debtor; (2) withhold any government payment to the debtor, including tax refunds, in the amount of the indebtedness; (3) employ collection agencies to enforce collection; and (4) report the indebtedness to credit bureaus. The United States Department of Justice also may instruct the United States Attorney to sue for collection.

**10. POST-CONFIRMATION QUARTERLY REPORTS.** Although monthly operating reports are not required for periods after confirmation, the Debtor or other plan proponent is required to submit and file quarterly reports on the status of plan payments [*See Attached EXHIBIT "C"*]. Like the Quarterly Fee Statement, these reports are due thirty (30) days after the calendar quarter ends. So, for example, if the case confirms on June 20th, the final operating report covers the period from May 1st to June 20th. The first report on the status of plan payments will be due on July 31st and should cover the period from June 21st through June 30th.

Questions regarding these instructions and reporting requirements should be referred to the bankruptcy analyst or paralegal assigned to your case. The Office of the United States Trustee reserves the right to require additional information as may be necessary to the administration of the case.

IRA BODENSTEIN

UNITED STATES TRUSTEE

By:

SHEREE G. DANDURAND

Revised: 10/98

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF  
RECEIPT AND VERIFICATION

TO: IRA BODENSTEIN, UNITED STATES TRUSTEE

CASE NAME: \_\_\_\_\_

CASE NO.: \_\_\_\_\_

I, \_\_\_\_\_ DECLARE UNDER PENALTY OF  
PERJURY THAT I AM THE DULY AUTHORIZED REPRESENTATIVE OF THE DEBTOR IN  
POSSESSION DESIGNATED TO OPERATE THE BUSINESS OF  
\_\_\_\_\_, AND AS  
SUCH I HEREBY ACKNOWLEDGE RECEIPT FROM THE UNITED STATES TRUSTEE OF THE  
OPERATING INSTRUCTIONS AND REPORTING REQUIREMENTS. I HAVE READ AND  
UNDERSTAND THE INSTRUCTIONS AND AGREE TO COMPLY WITH SAID INSTRUCTIONS.

SIGNED: \_\_\_\_\_

DATED: \_\_\_\_\_

I, \_\_\_\_\_, BEING COUNSEL FOR THE DEBTOR IN  
POSSESSION, HAVE REVIEWED THE OPERATING INSTRUCTIONS AND REPORTING  
REQUIREMENTS WITH THE PERSON SIGNING ABOVE.

SIGNED: \_\_\_\_\_

DATED: \_\_\_\_\_

EXHIBIT "A"  
IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE \_\_\_\_\_ DISTRICT OF \_\_\_\_\_  
\_\_\_\_\_ DIVISION

CASE NAME: \_\_\_\_\_ CASE NO.: \_\_\_\_\_

U. S. TRUSTEE QUARTERLY FEE STATEMENT  
Pursuant to Fed. R. Bankr. P. 2015(a)(5)

FOR CALENDAR QUARTER ENDING \_\_\_\_\_, 19\_\_\_\_

DISBURSEMENTS\*

1. MONTH DISBURSEMENTS

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

TOTAL DISBURSEMENTS

FOR QUARTER \$ \_\_\_\_\_

2. QUARTERLY FEE OWED PURSUANT TO \$\_\_\_\_\_

28 U.S.C. §1930(A)(6)

3. QUARTERLY FEE PAID \$\_\_\_\_\_

(Attach proof of payment)

4. AMOUNT OF UNPAID FEES (IF ANY) \$\_\_\_\_\_

I,\_\_\_\_\_ acting as the duly authorized agent for the Debtor In Possession (Trustee) (Plan Administrator) declare under penalty of perjury under the laws of the United States that I have read and certify that the figures, statements, disbursement itemizations, and account balances as listed in this U.S. Trustee Quarterly Fee Statement are true and correct as of the date of this report to the best of my knowledge, information and belief.

DATED:\_\_\_\_\_

For the Debtor In Possession (Trustee) (Plan Administrator)

(Print or type name and \_\_\_\_\_

capacity of person signing

this Declaration). \_\_\_\_\_

\* For periods subsequent to plan confirmation, this includes payments pursuant to the confirmed plan as well as all other disbursements.

EXHIBIT "B"

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE \_\_\_\_\_ DISTRICT OF \_\_\_\_\_

\_\_\_\_\_ DIVISION

CASE NAME: \_\_\_\_\_ CASE NO.: \_\_\_\_\_



U. S. TRUSTEE QUARTERLY REPORT ON STATUS OF PLAN PAYMENTS

FOR CALENDAR QUARTER ENDING \_\_\_\_\_, 19\_\_

1. Were any payments required to be made  
under the plan this past calendar quarter? yes\_\_\_\_\_ no\_\_\_\_\_

2. If yes, were all required payments made? yes\_\_\_\_\_ no\_\_\_\_\_

3. If not, on a separate schedule, state the name, address and telephone number of each unpaid creditor,  
the amount due and the reason payment was not made.

I,\_\_\_\_\_ acting as the duly authorized agent under the  
confirmed plan declare under penalty of perjury under the laws of the United States that I have read and  
certify that the information listed in this U.S. Trustee Quarterly Report on Status of Plan Payments is true  
and correct as of the date of this report to the best of my knowledge, information and belief.

DATED:\_\_\_\_\_

For the Debtor In Possession (Trustee) (Plan Administrator)

(Print or type name and \_\_\_\_\_

capacity of person signing

this Declaration). \_\_\_\_\_

EXHIBIT "C"